UNITED
NATIONS

AT

Administrative Tribunal

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LIMITED

AT/DEC/568
4 November 1992

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 568

Cases No. 588: CHRISTY
No. 589: THORSTENSEN
No. 590: WHITE

Against: The United Nations Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Samar Sen, Vice-President; Mr. Arnold Kean;

Whereas, on 31 January 1992, Lawrence Christy, a staff member of the Food and Agriculture Organization of the United Nations, Swein Thorstensen, a staff member of the International Atomic Energy Agency and Michael Robert White, a staff member of the International Maritime Organization, all of them participants in the United Nations Joint Staff Pension Fund, filed applications in which they requested, in accordance with article 12 of the Statute of the Tribunal, the correction of alleged errors in Judgement No. 546, rendered by the Tribunal on 14 November 1991;

Whereas the applications contain pleas which read as follows:

"PLEAS ...

MAY IT PLEASE the Tribunal:

1. To declare itself competent in this case;

2. To declare the present application receivable;

3. To correct the error arising first from the omission of part of the proceedings from the text of Judgement No. 546, rendered on 14 November 1991 in the Christy, Thorstensen and White cases:

First, from the failure to mention:

- The pleas requesting the disqualification of Mr. Ioan Voicu in cases Nos. 588, 589 and 590, filed by the Applicants on 22 October 1991,
- The decision by the President of the Tribunal of 23 October 1991, rejecting the request for disqualification,
- The letter from the Executive Secretary of the Tribunal dated 24 October 1991, conveying the decision by the President of the Tribunal to change the composition of the panel; and

Second, from the failure to reproduce in full (or otherwise to examine in full) and pass judgement on:

- The pleas filed by the Applicants on 25 October 1991, in which they requested the Tribunal to notify them officially of the change in the membership of the panel.

By mentioning these four documents, reproducing in full (or examining in full) the text of the pleas filed on 25 October 1991 and ruling on such pleas in the Judgement:

4. To correct the clerical mistake (or error arising from an accidental slip) consisting in the use in Judgement No. 546, rendered on 14 November 1991, in the Christy, Thorstensen and White cases, of the word 'distorted' in the sixth line of the original English text of paragraph VI ('faussé' in the fifth line of the French text of paragraph VI), which implies that during the period under consideration the gap between the income replacement ratio of the United Nations common system and the corresponding ratio for the United States Federal Civil Service had widened, while it had in fact become narrower since in the period from April 1987 to May 1989 the United Nations common system ratio had risen from 57.5 to 58.9 per cent and the corresponding ratio for the United States Federal Civil Service had remained at 59.8 per cent,

By using any other verb (or term) that does not convey the notion of a widening of the gap;

5. To award the Applicant as costs, a sum payable by the Respondent, estimated at the time of the filing of this application at three thousand (3,000) French francs, subject to adjustment upon completion of the proceedings."

Whereas the Respondent filed his answer on 24 February 1992, in which he asked that the applications be rejected in their entirety on the ground that Judgement No. 546, delivered by the Tribunal on 14 November 1991, did not contain, within the meaning of article 12 of the Tribunal's Statute, "any clerical or arithmetical mistakes ... or errors arising therein from any accidental slip or omission". The Applicants, according to the Respondent, were attempting "to re-argue an issue of fact that has been covered extensively both in the written submissions of the parties and in the course of the oral proceedings held before the Tribunal on 25 October 1991".

Whereas the Applicants filed written observations on 2 April 1992;

Whereas, on 22 April 1992, the Respondent submitted an additional statement;

Whereas the facts in the case were set forth in Judgement No. 546.

On 31 January 1992, the Applicants filed with the Tribunal the applications referred to earlier.

The Tribunal, having deliberated from 19 October to 4 November 1992, now pronounces the following judgement:

I. The applications herein arise out of the Tribunal's Judgement No. 546 dated 14 November 1991. The Applicants seek, under article 12 of the Tribunal's Statute, correction of alleged "errors arising ... from any accidental slip or omission." The Tribunal recently had occasion to consider this provision of its Statute in Judgement No. 564, Lavalle (1992).

II. The Applicants now assert that the absence from Judgement No. 546 of any discussion of pleas requesting disqualification of a member of the Tribunal was an omission that should be corrected under article 12 of the Tribunal's Statute. The Tribunal does not share this view. The omission from Judgement No. 546 of any such discussion was not accidental. The Tribunal member in question, not having participated in the panel which rendered Judgement No. 546, reference to the matter in the Judgement was considered irrelevant and unnecessary.

III. The Applicants also allege a clerical error in the use of the word "distorted" in paragraph VI of Judgement No. 546. The Tribunal, having examined the various claims advanced by the Applicants in support of their contentions that the word "distorted" was in error, rejects them. The word accurately described the Tribunal's view of conclusions reached by the General Assembly in 1989. Accordingly, no basis exists under article 12 of the Tribunal's Statute for the action requested by the Applicants.

IV. Finally, the Tribunal notes that the Applicants recognize that the "correction" they seek with respect to paragraph VI of the Judgement "would not in any way call into question the operative part of the Judgement...". In this regard, as well as with respect to the "omissions" alleged by the Applicants, the Tribunal recalls its statement in Judgement No. 564, Lavalle, para. VIII(3):

> "Thus, in principle, only if a clerical or arithmetical mistake or an error arising from any accidental slip or omission affects the Applicant's rights under a judgement, would the Tribunal ordinarily be constrained to grant an application for correction."

V. For the foregoing reasons, the applications are rejected.

(Signatures)

Jerome ACKERMAN
President

Samar SEN
Vice-President

Arnold KEAN
Member

New York, 4 November 1992

R. Maria VICIEN-MILBURN
Executive Secretary